IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2621 OF 2005

Smt. Laxmibai Narayan Bhagt .... Petitioner

versus

Yeshwant Ramchandra Kambli & ors. ... Respondents.

Shri B.G. Tangsali for the petitioner.
Shri M.C.Hegde for Respondents 1 and 7.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 28, 2006.

P.C:

1. Heard the learned counsel for the Petitioner and the learned advocate for the respondent. Perused the record.

2. The petition is referred by the tenant against the judgment and order passed by the District Judge, Sindhudurg dated 24-3-2005 dismissing the appeal and confirming the decree passed by the trial court for eviction of the petitioner from suit premises on the ground contemplated by section 13(i)(g) of the Bombay Rent Act holding that greater hardship would be caused to the respondent/ plaintiff if degree is refused to be

passed, than the petitioner if the decree for eviction is passed.

3. The Plaintiff has filed the suit against the petitioner/defendant for possession of the suit premises, which is in his occupation. It is alleged by the plaintiff that the suit property was given to the petitioner for a period from 1-1-1996 to 30-11-1996 under care taker agreement for temporary use. Alternatively it was submitted that if the said agreement was held not proved, then the petitioner was a monthly tenant in the suit property. The possession of the premises was claimed by the plaintiff on various count including bonafide requirement for personal use and occupation as well as on the ground of permanent construction made by the petitioner in the suit premises without consent of the landlord. The petitioner denied the allegations made by the landlord and sought dismissal of the suit.

4. The trial court adjudicated the suit on the basis of available evidence and came to the conclusion that the plaintiff had proved that the suit premises was required for bonafide purpose, for their own use and occupation. However, it was held that the greater hardship would be caused to the defendant, if the decree is passed than the plaintiff if the decree is

refused to be passed. The suit came to be decreed for possession on the ground that the plaintiff had succeeded in proving that the defendant had made permanent construction in the suit premises unauthorizedly and without consent of the plaintiff and finally decree for eviction came to be passed against the petitioner.

5. An appeal was carried to the District Court. The learned District Judge reversed the finding of the trial court on the point of permanent construction, but concurred with the finding recorded by the trial court in respect of reasonable and bonafide requirement of the plaintiff to occupy the suit premises. It was also held that the trial court have erred in holding that the defendant would suffer greater hardship than the plaintiff if the decree was passed and came to the conclusion that it would be the plaintiff who would suffer greater hardship if the decree is refused to pass. Hence the appeal came to be dismissed and hence the present petition.

6. At the outset it may be noted that both the courts have recorded concurrent finding that the plaintiff has proved his requirement in the suit premises. The evidence in that regard appears to be that the house no.1026 occupied by the plaintiff has become very

dilapidated condition and is unfit for occupation, which is duly proved not only by photographs on record, but also by the report of the court commissioner, who was appointed for specific purpose to inspect the condition of the house and therefore there is no doubt whatsoever that the present house of the plaintiff is unfit for residence.

7. On this basis, the appellate court proceeded to hold that it would be necessary for the plaintiff-respondent to find out some alternative rented house for residence as it has become dangerous to live in that house. Therefore on that count itself the finding recorded by the trial court was reversed on the point of issue of greater hardship. The perusal of the judgments of both the courts below, on this issue, leave no doubt whatsoever that the lower appellate court has rightly held that the plaintiff would suffer greater hardship if the decree is refused to be passed than the defendant if the decree is passed against him. Because his evidence is conspicuously silent on the point whether he has made any search for seeking alternate accommodation. Be as it may, the fact remains that the lower appellate court has duly and properly appreciated the evidence on record and there is absolutely no perversity in coming to the conclusion that the respondent deserves decree for eviction

against the present petitioner. In the result, the petition is devoid of any merit and hence stands dismissed with no order as to costs.

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